

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Civic Affairs Committee

20 September 2013

LEAD OFFICER: Legal & Democratic Services Manager

REVIEW OF WHISTLEBLOWING POLICY

Purpose

1. The Civic Affairs Committee took over the responsibility for the monitoring and review of the Council's Whistleblowing policy at its inception in September 2012. Following changes in national legislation the policy needs to be updated and relaunched to staff.
2. This is not a key decision.

Recommendations

3. That the Committee:
 - a) Considers and **APPROVES** the amended policy document at Appendix A;
 - b) **NOTES** the quick guide to the policy for staff at Appendix B;
 - c) **AGREES** to include the Whistleblowing policy as a standing item on its agenda; and
 - d) **AGREES** to review the policy on a bi-annual basis to ensure it is fit for purpose.

Reasons for recommendations

4. To ensure the council's Whistleblowing policy is updated following changes to legislation in the Enterprise and Regulatory Reform Act 2013 (ERRA) which came into force on 25 June 2013, which include a Public Interest test requirement for whistleblowers. The amended policy outlines how the legislative changes impact on employees who have concerns to raise and the Council needs to ensure that staff are aware of its existence and how to use it.

Background

5. The whistleblowing legislation under the Public Interest Disclosure Act 1998 requires employers to refrain from dismissing workers and employees, or subjecting them to any other detriment because they have made a protected disclosure ("whistleblowing"). Whistleblowing occurs when an employee or worker draws attention to a concern or concerns of wrongdoing in their organisation. In the context of the Council the types of concerns a worker or an employee may wish to raise are set out in paragraphs 2.4 & 2.52 of the policy attached as **Appendix A**.
6. Whistleblowing policies are aimed at fostering a climate of openness and transparency in which individuals in the workplace do not feel that they will be victimised if they raise concerns about wrongdoing in their organisation to an appropriate officer within the organisation. As part of best practice, the government expects all public bodies to have written whistleblowing policies. It is therefore necessary that the Council's whistleblowing policy is up to date and fit for purpose. A brief guide for staff has also been prepared and is attached as **Appendix B** which will be sent out to all staff with their payslips to ensure it reaches everyone.

Legislative changes

7. Sections 17 - 20 of the ERRA have introduced a series of changes to the Public Interest Disclosure Act 1998, a number of which require the Council to redraft its Whistleblowing Policy.
8. There is now an express requirement that whistleblowing by employees or workers is made in the public interest (section 17 of ERRA). Although ERRA does not define the meaning of public interest however it is implicit that disclosure of any wrongdoing by an employee must exclude those which can be characterised as being purely of a personal nature. For example a grievance by an employee concerning their terms and conditions of employment will not be considered to be in the public interest.
9. Secondly, under section 19 of ERRA an employer can be held liable (vicarious liability) for any detriment inflicted on the whistleblowing employee or worker by his or her colleagues. The employer would have a defence if it can demonstrate that it took all reasonable steps such as compliance with its whistleblowing policy to prevent such detriment being inflicted on the whistleblower. Compensation for a successful whistleblowing claim against an employee is unlimited and could therefore in some instances be quite substantial
10. In summary the changes are as follows:
 - Section 17 narrows the definition of 'protected disclosure' to those that are made in the 'public interest';
 - Section 18 removes the requirement that a worker or employee must make a protected disclosure 'in good faith'. Instead, tribunals will have the power to reduce compensation by up to 25% for detriment or dismissal relating to a protected disclosure that was not made in good faith;
 - Section 19 introduces protection for whistleblowers from bullying or harassment by co-workers;
 - Section 20 enables the Secretary of State to extend the meaning of 'worker' for the purpose of defining who comes within the remit of the whistleblowing provisions.

Options

11. To leave the current whistleblowing policy as it is. The current policy will not be compatible with the legislation relating to whistleblowing following the coming into force of the relevant provisions of the ERRA.

Implications

Financial

- 1) None.

Legal

- 2) Legal implications are set out in this report. The consequences of the failure of the Council to act should issues be reported can be very significant; the Council has a duty both to respond to matters that are in the public interest and to protect its employees

Staffing

- 3) None.

Risk Management

4) None.

Equality and Diversity

5) None.

Climate Change

6) None.

Consultation

The HR Manager and Head of Finance, Policy and Performance have been consulted and their comments and amendments included in the policy.

Effect on Strategic Aims

None

Background Papers:

The Public Interest Disclosure Act 1998

The Enterprise and Regulatory Reform Act 2013

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